

Message Text

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ACTION IO-13

INFO OCT-01 EUR-12 ISO-00 L-03 CPR-01 /030 W
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R 282134Z SEP 76
FM AMEMBASSY OTTAWA
TO SECSTATE WASHDC 1203
INFO USMISSION USUN

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E.O. 11652: N/A

TAGS: PORG, AORG, UN, CA

SUBJ: PRIVILEGES AND IMMUNITIES ACCORDED BY HOST GOVERNMENTS
TO OBSERVER DELEGATIONS TO INTERNATIONAL ORGANIZATIONS

REF: STATE 224856

1. EMBOFF RECEIVED FOLLOWING INFORMATION FROM GREGOIRE DE
BLOIS, LEGAL ADVISORY DIVISION, EXTAFF. RESPONSES ARE KEYED
TO QUESTIONS POSED IN REFTEL.

2. CANADA HAS LITTLE EXPERIENCE WITH OBSERVER MISSIONS TO
INTERNATIONAL ORGANIZATIONS HEADQUARTERED HERE. ICAO IS THE
ONLY INTERNATIONAL ORGANIZATION HEADQUARTERED IN CANADA AND
THE HABITAT CONFERENCE, HELD LAST SPRING IN VANCOUVER, WAS
A ONE-TIME EVENT. BEYOND THESE, THERE IS NO PRECEDENT
FOR REFTEL PURPOSES.

3. PARA 3 REFTEL: LEGAL BASIS FOR P&I INCLUDES EXECUTIVE
ACTION, INTERNATIONAL AGREEMENT, AND LEGISLATION. GOC SIGNED
INTERNATIONAL AGREEMENT WITH ICAO IN 1951 AND SIGNED INTER-
NATIONAL AGREEMENT WITH UN REGARDING HABITAT CONFERENCE
IN 1976. LEGAL APPLICATION IN CANADA, HOWEVER, UNDER
SUCH INTERNATIONAL AGREEMENTS IS ACHIEVED EITHER THROUGH
AN ORDER-IN-COUNCIL OR PARLIAMENTARY LEGISLATION. THE
FORMER IS EXECUTIVE ACTION SINCE IT IS PASSED BY THE
CABINET WITHOUT LEGISLATIVE IMPRINT, WHEREAS THE LATTER
IS, OF COURSE, LEGISLATIVE. GOC CHOOSES ONE OR THE
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OTHER IMPLEMENTING MECHANISM, DEPENDING UPON IMPORTANT

AND GENERAL APPLICATION OF SUBJECT MATTER. ORDERS-IN-COUNCIL ARE USED FOR MATTERS OF SPECIFIC OR LIMITED SCOPE.

4. PARA 1 REFTEL: HABITAT REPRESENTS ONLY CANADIAN PRACTICAL EXPERIENCE WITH P&I ACCORDED TO OBSERVER MISSIONS SINCE 1951 ICAO AGREEMENT MAKES NO MENTION OF OBSERVERS NOR IS TOPIC COVERED BY IMPLEMENTING LEGISLATION OR ORDERS-IN-COUNCIL. IN HABITAT AGREEMENT BETWEEN GOC AND UN, ARTICLE II DESCRIBES 6 CATEGORIES OF PARTICIPANTS AT THE CONFERENCE. THESE ARE:

A. REPRESENTATIVES OF STATES;

B. REPRESENTATIVES OF THE INTERESTED ORGANS OF THE UNITED NATIONS;

C. REPRESENTATIVES OF THE SPECIALIZED AGENCIES AND THE INTERNATIONAL ATOMIC ENERGY AGENCY;

D. OBSERVERS FROM INTERGOVERNMENTAL ORGANIZATIONS;

E. OBSERVERS FROM NATIONAL LIBERATION MOVEMENTS AND ORGANIZATIONS ENTITLED TO PARTICPATE IN THE CONFERENCE;

F. OBSERVERS FROM NON-GOVERNMENTAL ORGANIZATIONS.

5. ARTICLE XVII OF THE HABITAT AGREEMENT PROVIDES THAT "THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS SHALL BE APPLICABLE IN RESPECT OF THE CONFERENCE". NATIONAL LIBERATION MOVEMENTS AND ORGANIZAIONS ARE TREATED AS "EXPERTS ON MISSION FOR THE UNITED NATIONS" AND ENJOY THEREBY PRIVILEGES AND IMMUNITIES UNDER ARTICLE VI OF THE UN CONVENTION ON P&I. SIMILARLY, OBSERVERS FROM NON-GOVERNMENTAL ORGANIZATIONS ARE TREATED AS "EXPERTS". OBSERVERS FROM INTERGOVERNMENTAL ORGANIZATIONS ARE GIVEN P&I ENJOYED BY UN OFFICIALS OF COMPARABLE RANK.

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6. ORDER-IN-COUNCIL IMPLEMENTING HABITAT AGREEMENT MAKES NO REFERENCE TO OBSERVERS BUT MENTIONS ONLY "EXPERTS". IN THIS CONNECTION, IT STATES "EXPERTS PERFORMING MISSIONS FOR THE ORGANIZATION SHALL HAVE IN CANADA, TO SUCH EXTENT AS MAY BE REQUIRED FOR THE PERFORMANCE OF THEIR FUNCTIONS, THE PRIVILEGES AND IMMUNITIES SET FORTH IN ARTICLL VI OF THE CONVENTION FOR EXPERTS ON MISSION FOR THE UNITED NATIONS". FYI:

GREGOIRE DE BLOIS EXPLAINED THAT THIS WAS A REFLECTION OF GOC CARE IN HANDLING OF PLO PARTICIPATION, A HIGHLY EMOTIONAL DOMESTIC POLITICAL ISSUE. BY MAKING NO REFERENCE TO OBSERVERS, GOC PRESUMABLY FELT IT AVOIDING ANY QUESTION OF ITS RECOGNITION OF PLO. END FYI.

7. GOC HAS MADE NO DISTINCTION BETWEEN THE THREE CATEGORIES OF PERSONNEL DESCRIBED IN PARA 1 REFTEL SINCE IT HAS NOT YET BEEN CONFRONTED WITH OBSERVER MISSIONS OF SUCH MIX. THE ONLY EXCEPTION MIGHT BE TREATMENT AT HABITAT OF OBSERVERS FROM INTERNATIONAL ORGANIZATIONS. AS NOTED ABOVE, THESE GIVEN P&I ENJOYED BY UN OFFICIALS OF COMPARABLE RANK.

8. PARA 2 REFTEL: GOC HAS NOT MADE EXACT DISTINCTIONS MENTIONED IN PARA 2 REFTEL BUT HAS MADE DISTINCTIONS AS DESCRIBED ABOVE IN CONNECTION WITH THE HABITAT CONFERENCE.

9. EMBASSY POUCHING TO EUR/CAN COPY OF GOC/UN HABITAT AGREEMENT, ORDER-IN-COUNCIL IMPLEMENTING SAME AND PARLIAMENTARY LEGISLATION PROVIDING FOR PRIVILEGES AND IMMUNITIES UNDER 1946 UN CONVENTION.

ENDERS

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Message Attributes

Automatic Decaptoning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: DIPLOMATIC PRIVILEGES, MEETING OBSERVERS, INTERNATIONAL ORGANIZATIONS
Control Number: n/a
Copy: SINGLE
Draft Date: 28 SEP 1976
Decapton Date: 01 JAN 1960
Decapton Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: BoyleJA
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976OTTAWA03912
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D760366-0853
From: OTTAWA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19760912/aaaaajzd.tel
Line Count: 139
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION IO
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 76 STATE 224856
Review Action: RELEASED, APPROVED
Review Authority: BoyleJA
Review Comment: n/a
Review Content Flags:
Review Date: 25 MAR 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <25 MAR 2004 by ShawDG>; APPROVED <03 AUG 2004 by BoyleJA>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: PRIVILEGES AND IMMUNITIES ACCORDED BY HOST GOVERNMENTS TO OBSERVER DELEGATIONS TO INTERNATIONAL ORGANIZATIONS
TAGS: PORG, AORG, CA, UN
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006